

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALESSANDRO DIRIENZO, on behalf of himself, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

DUNBAR ARMORED, INC., a Maryland Corporation,

Defendant.

Consolidated with:

ANTHONY ROGERS, on behalf of himself and all others similarly situated,

Plaintiff,

v.

DUNBAR ARMORED, INC., a Maryland corporation, and DOES 1 through 100, inclusive,

Defendants.

CASE No. **09CV2745 DMS (JMA)**
(Class Action)

ORDER GRANTING JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Assigned to: Judge Dana M. Sabraw
Referred to: Magistrate Judge Jan M. Adler
Dirienzo Complaint Filed: December 8, 2009

CASE NO. 10CV1931 DMS (JMA)

Rogers Complaint Filed: October 17, 2009

1 Plaintiffs Alessandro Dirienzo and Anthony Rogers (“Plaintiffs”) and Defendant
2 Dunbar Armored, Inc. (“Defendant”) have submitted a joint motion for conditional certification
3 of a settlement class in this action, preliminary approval of the parties’ proposed settlement,
4 approval of the notice to be sent to the class about the settlement and the forms of class member
5 settlement information and election not to participate in the settlement, approval of the claim
6 form, and the setting of a date for the hearing on final approval of the settlement.

7 The Court having read and considered the papers on the motion and the law, and
8 good cause appearing therefore,

9 IT IS ORDERED:

10 1. The Court has jurisdiction over this action and the parties’ proposed settlement
11 pursuant to 28 U.S.C. Section 1332.

12 2. The proposed class satisfies the requirements of a settlement class because the
13 class members are readily ascertainable and a well-defined community of interest exists in the
14 questions of law and fact affecting the parties.

15 3. The parties’ Joint Stipulation of Settlement and Release (“Stipulation of
16 Settlement”), attached to the Declaration of Norman B. Blumenthal (“Blumenthal Decl.”), as
17 Exhibit A is granted preliminary approval as it meets the criteria for preliminary settlement
18 approval, except as to the following: (1) the sentence beginning with “The individual settlement
19 awards will be determined by . . .” on page 10 of the Joint Stipulation of Settlement and Release
20 shall be changed to read “The individual settlement awards will be determined by dividing the
21 Net Settlement Fund by the total number of workweeks for the entire Class, resulting in the
22 Workweek Value; and then multiplying the Workweek Value by the number of workweeks
23 worked by each Class Member during the Class Period (the “Individual Settlement Award”).”,
24 and (2) the case number listed for *Anthony Rogers v. Dunbar Armored, Inc.* in the Joint
25 Stipulation of Settlement and Release shall to be corrected to read “Case No. 10cv1931 DMS
26 (JMA). The Settlement falls within the range of possible approval as fair, adequate, and
27 reasonable, and appears to be the product of arm’s-length and informed negotiations and to treat

1 all Class Members fairly.

2 4. Under Rule 23(e), the Court may approve a class settlement only upon finding that
 3 it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). To determine whether a proposed
 4 settlement meets these standards, the Court must evaluate a number of factors, including:

5 (1) the strength of the plaintiffs’ case;
 6 (2) the risk, expense, complexity, and likely duration of further litigation;
 7 (3) the risk of maintaining class action status throughout the trial;
 8 (4) the amount offered in settlement;
 9 (5) the extent of discovery completed and the stage of the proceedings;
 10 (6) the experience and views of counsel;
 11 (7) the presence of a governmental participant; and
 12 (8) the reaction of the class members to the proposed settlement.

13 Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003) (citations omitted); see also *Officers for
 14 Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). These factors are not exclusive,
 15 and in some circumstances, one factor may deserve more weight than others or alone may prove
 16 to be determinative. *Officers for Justice*, 688 F.2d at 625; *Nat'l Rural Telecomms. Coop. v.
 17 DIRECTV, Inc.*, 221 F.R.D. 523, 525-26 (C.D. Cal. 2004). In addition, the settlement may not be
 18 the product of collusion among the negotiating parties. *Ficalora v. Lockheed California Co.*, 751
 19 F.2d 995, 997 (9th Cir. 1985); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir.
 20 2000). Given that some of these factors cannot be fully assessed until the Court conducts the
 21 Final Approval Hearing, a full fairness analysis is unnecessary at this stage. *Singer v. Becton
 22 Dickinson & Co.*, No. 08cv821 IEG (BLM), 2009 WL 4809646, at *7 (S.D. Cal. Dec. 9, 2009)
 23 (citation and quotations omitted). “Rather, at the preliminary approval stage, the Court need only
 24 review the parties’ proposed settlement to determine whether it is within the permissible range of
 25 possible judicial approval and thus, whether the notice to the class and the scheduling of the
 26 formal fairness hearing is appropriate.” *Id.* (citations and quotations omitted). All of the factors
 27 considered for class settlement approval support the preliminary approval of the Settlement:

28 a. **The Strength of the Plaintiffs’ Case.** The Consolidated Class Action
 29 alleges that employees in the Settlement Class were not provided business expense

1 reimbursement and compensation for missed meal and rest periods. Dunbar asserted real
2 and substantial defenses to these claims as explained in the Declaration of Norman
3 Blumenthal. Further, meal and rest break claims are currently under review by the
4 California Supreme Court in *Brinker v. Superior Court*, and therefore, the law is uncertain
5 as to these claims. Given the above uncertainties, this factor weighs in favor of granting
6 preliminary approval of the settlement.

7 **b. The Risk, Expense, Complexity, and Likely Duration of Further**
8 **Litigation.** “In most situations, unless the settlement is clearly inadequate, its acceptance
9 and approval are preferable to lengthy and expensive litigation with uncertain results.”
10 *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 526 (citations and quotations omitted).
11 Here, the parties have indicated a clear intention and desire to resolve this matter and
12 continued litigation would have proved expensive for both sides. The parties
13 acknowledge that litigating and trying this action may have led to possible appeals. This
14 factor weighs in favor of preliminary approval.
15

16 **c. The Risk of Maintaining Class Action Status.** Plaintiffs also argue that
17 there was a “significant risk” that they would not have been able to obtain class
18 certification and maintain the certified class through trial. Class certification in this action
19 is hotly disputed by Defendant. This factor weighs in favor of preliminary approval of the
20 settlement.
21

22 **d. The Amount Offered in Settlement.** When analyzing the amount offered
23 in settlement, the Court should examine “the complete package taken as a whole, rather
24 than the individual component parts” to determine whether the proposal is fair. *Officers*
25 *for Justice*, 688 F.2d at 628. “[I]t is well-settled law that a proposed settlement may be
26 acceptable even though it amounts to only a fraction of the potential recovery that might
27 be available to class members at trial.” *Nat'l Rural Telecomms. Coop.*, 221 F.R.D. at 527
(citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)). “[T]he

1 very essence of a settlement is compromise.” *Linney*, 151 F.3d at 1242 (citation and
2 quotations omitted). The maximum Settlement Fund is \$1,500,000. The allocation
3 formula for the Settlement is as follows: Settlement awards to Class Members will be
4 determined on a workweek basis and the amount to be paid per workweek shall be
5 calculated by dividing the Net Settlement Fund by the total number of workweeks worked
6 by all of the respective Class Members during the Class Period pursuant to the settlement
7 allocation described below to yield the estimated minimum payment to be paid to the
8 Class Members for each workweek. The number of workweeks worked by Class
9 Members during the respective Class Period will be determined by reference to
10 Defendant’s records. (Stipulation of Settlement at ¶ 17(c).) Here, the Declaration of
11 Class Counsel estimated that the settlement amount of \$1,500,000, before deductions,
12 represents at least 30% of the total maximum liability estimated by Class Counsel,
13 assuming these amounts could be proven at trial. A settlement of this amount therefore
14 falls within the range of similar settlements approved in the Ninth Circuit. Accordingly,
15 the Court finds the amount offered in settlement weighs in favor of granting preliminary
16 approval of the settlement.

17 e. **The Extent of Discovery Completed and the Stage of the Proceedings.**

18 The proposed settlement in this case was reached at an early stage in the proceedings;
19 thus, no formal discovery took place prior to settlement. Rather, Defendant, in
20 preparation for attending mediation, informally provided Plaintiff with necessary
21 information to evaluate the case for mediation, including time records and payroll
22 information for members of the class. Plaintiffs, with the assistance of their damages
23 expert, analyzed the data and calculated damages. Plaintiffs have adequately
24 demonstrated that the agreement to settle did not occur until Class Counsel possessed
25 sufficient information to evaluate the case and make an informed decision about
26 settlement. Accordingly, the Court finds that this factor supports preliminary approval of
27 the settlement.

1 f. **The Experience and Views of Counsel.** Both Class Counsel and
 2 Defendant's counsel are of the opinion that the settlement is fair, reasonable, and adequate
 3 and is in the best interests of the class. The settlement was negotiated and approved by
 4 experienced counsel on both sides of the litigation. Accordingly, this factor weighs in
 5 favor of preliminary approval.

6 g. **The Presence of a Governmental Participant.** This factor does not
 7 weigh in the Court's analysis as there is no governmental participant in this action.
 8

9 h. **The Reaction of the Settlement Class to the Proposed Settlement.** The
 10 reaction of the Settlement Class Members to the proposed settlement cannot be evaluated
 11 at this time. This factor will be appropriate for consideration at the hearing for final
 12 approval of the settlement.

13 5. The parties' proposed notice plan is constitutionally sound because individual
 14 notices will be mailed to all class members, the vast majority whose identities and addresses are
 15 known to the parties, and such mailed notice is the best notice practicable. The parties' proposed
 16 Notice of Preliminary Approval of the Settlement ("Notice") (Stipulation of Settlement, Ex. A),
 17 and proposed Claim Form (*id.*, Ex. B) are sufficient to inform Settlement Class Members of the
 18 terms of the settlement, their rights under the settlement, their rights to be excluded from the
 19 settlement, their rights to object to the settlement, their rights to receive a share of the settlement
 20 or elect not to participate in the settlement, and the processes for doing so, and the date and
 21 location of the final approval hearing, and therefore are all approved, with the exceptions
 22 contained herein.

23 6. The following class of persons are certified as the Settlement Class in this action
 24 solely for the purposes of the Settlement:

25 all current and former employees employed by Defendant as a driver/guard and/or
 26 crew chief or similar job title in California between September 26, 2006, through
 27 the earlier of the date of preliminary Court approval or December 31, 2010.

For purposes of settlement only, the Court conditionally certifies the above Settlement Class and

1 finds that the prerequisites to certification under Rule 23 of the Federal Rules of Civil Procedure
2 as satisfied as follows:

3 a. **Numerosity.** According to the Parties, the Settlement Class is comprised
4 of approximately 785 Settlement Class Members. This number is sufficient to make
5 joinder impracticable. The Court finds that the number of Settlement Class Members
6 satisfies the numerosity requirement for settlement purposes only.

7 b. **Commonality.** The Court finds for settlement purposes only that
8 commonality exists for the Settlement Class because the following questions are common
9 to the Settlement Class: (i) whether or not Defendant failed to reimburse the Settlement
10 Class for all reasonable business expenses in violation of California Labor Code Section
11 2802; (ii) whether or not Defendant violated the Private Attorneys General Act (Labor
12 Code Section 2699, et seq.), Unfair Competition Law (Business and Professions Code
13 Section 17200, et seq.), under Labor Code Sections 201, 203, 221, 226.7, 512, and 2802,
14 and Wage Order No. 9 as to the Settlement Class; and (iii) whether or not Defendant
15 failed to provide meal and rest periods to the Settlement Class in violation of California
16 Labor Code Sections 226.7 and 512 and IWC Wage Order 9.

17 c. **Typicality.** The court finds for settlement purposes only that typicality
18 exists for the Settlement Class because Plaintiffs, like every other member of the Class,
19 were employed by Dunbar and were subjected to the standardized practices of Dunbar
20 which are alleged to have failed to provide business expense reimbursement and meal and
21 rest periods. The Plaintiffs, like every other member of the Class, claim compensation for
22 missed meal periods and for business expense reimbursement. Thus, the claims of both
23 the Plaintiffs and the members of the Class arise from the same course of conduct by
24 Dunbar, involve the same issues, and are based on the same legal theories.

25 d. **Adequate Representation.** The Court finds for settlement purposes only
26 that the named Plaintiffs, Alessandro Dirienzo and Anthony Rogers, have and will fairly

1 and adequately protect the interests of the Settlement Class, as required under Rule
2 23(a)(4), and do not have any conflicts of interest with the absent class members, and
3 accordingly finds that they are suitable class representatives. Additionally, after
4 reviewing the qualifications of the applicants for appointment of class counsel,
5 Blumenthal, Nordrehaug & Bhowmik and Cohelan Khouri & Singer, the Court finds that
6 counsel satisfy the adequacy requirements of Rule 23(g)(1) and (4).

7 e. **Predominance.** The court finds for settlement purposes only that common
8 questions predominate for the Settlement Class because Plaintiffs contend that Dunbar
9 engaged in a uniform course of conduct with respect to business expense reimbursement
10 and meal and rest periods which resulted in a systematic failure to provide compensation
11 for incurred business expenses and missed meal and rest periods and that Dunbar's
12 policies with respect to these issues are uniform.

13 f. **Superiority.** The court also finds for settlement purposes only that the
14 Settlement Class satisfies the superiority requirement of Rule 23(b)(3) because a class
15 settlement would enable Settlement Class Members' to collectively resolve their common
16 claims.

17 7. Any Settlement Class Member who submits a timely and valid Claim Form will
18 receive a share of the settlement.

19 8. Any Settlement Class Member who wishes to comment on or object to the
20 Settlement or Class Counsel's attorneys' fees or costs award, or who elects not to participate in
21 the Settlement, has until 45 days after the mailing of the Class Notice to submit his or her
22 comment, objection, or request for exclusion pursuant to the procedures set forth in the Class
23 Notice. Class Counsel must file their application for the attorneys' fees and costs prior to the
24 mailing of the Class Notice so that the application is available for review by Settlement Class
25 Members, and the application will be heard at the Final Approval Hearing.

26 9. Gilardi & Co. is appointed to act as the Claims Administrator, pursuant to the

1 terms set forth in the Settlement.

2 10. The Class Notice and Claim Form attached as Exhibits A and B to the Stipulation
3 of Settlement are approved as to form and content, except as to the following: (1) the sentence
4 beginning with “The individual settlement awards will be determined by . . .” on page 7 of the
5 Notice shall be changed to read “The individual settlement awards will be determined by dividing
6 the Net Settlement Fund by the total number of workweeks for the entire Class, resulting in the
7 Workweek Value; and then multiplying the Workweek Value by the number of workweeks
8 worked by each Class Member during the Class Period.”, and (2) the case number listed for
9 *Anthony Rogers v. Dunbar Armored, Inc.* on page 1 of the Claim Form is to be corrected to read
10 “Case No. 10cv1931 DMS (JMA). The Class Notice will be disseminated according to the notice
11 plan described in the Stipulation of Settlement and substantially in the form submitted by the
12 parties. Proof of distribution of notice will be filed by the parties at or prior to the final approval
13 hearing.

14 11. Defendant is directed to provide the Claims Administrator the names, last-known
15 addresses, telephone numbers, and social security numbers of the Settlement Class Members as
16 specified by the Stipulation of Settlement no later than 15 days after the date of this order.

17 12. The Settlement Administrator is directed to mail the approved Class Notice Packet
18 by first-class mail to the Class Members no later than 30 days after the date of this order.

19 13. A final hearing will be held on August 5, 2011, at 1:30 p.m., to determine whether
20 the Settlement should be granted final approval as fair, reasonable, and adequate as to the
21 Settlement Class Members. The Court will hear all evidence and argument necessary to evaluate
22 the Settlement, and will consider the Class Representatives’ request for service awards and Class
23 Counsel’s request for attorneys’ fees and costs. Settlement Class Members and their counsel may
24 support or oppose the Settlement and the motion for the Class Representative service awards and
25 Class Counsel’s request for attorneys’ fees and costs, if they so desire, as set forth in the Class
26 Notice.

27 14. Any Settlement Class Member may appear at the final approval hearing in person

1 or by his or her own attorney, and show cause why the Court should not approve the Settlement,
2 or object to the Class Representative service awards and to Class Counsel's attorneys' fees and
3 costs. For any comments or objections to be considered at the hearing, the Class Member must
4 timely file comments with the Clerk of Court indicating briefly the nature of the Class Member's
5 comments, support, or objections. Comments or objections to the Settlement or to the Class
6 Counsel attorneys' fees and costs must be filed with the Court, and mailed to Class Counsel, not
7 later than 45 days after mailing of the Class Notice Packet.

8 15. The Court enjoins Plaintiffs and all Settlement Class Members from filing or
9 prosecuting any claims, suits, or administrative proceedings (including filing claims with the
10 California Division of Labor Standards Enforcement) regarding claims released by the Settlement
11 unless and until such Settlement Class Members have sent written requests for exclusion with the
12 Claims Administrator and the time for filing claims with the Claims Administrator has elapsed.

13 16. The Court reserves the right to continue the date of the final approval hearing
14 without further notice to Settlement Class Members. The Court retains jurisdiction to consider all
15 further applications arising out of or in connection with the Settlement.

IT IS SO ORDERED.

DATED: April 4, 2011

J. M. Salomé

**HON. DANA M. SABRAW
UNITED STATES DISTRICT JUDGE**